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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,549	07/29/2003	Arthur Ashman	1527/1E848US3	7469
7278	7590	09/06/2006	EXAMINER	
<b>DARBY &amp; DARBY P.C.</b> P. O. BOX 5257 NEW YORK, NY 10150-5257				BOUCHELLE, LAURA A
ART UNIT		PAPER NUMBER		
		3763		

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/630,549	ASHMAN, ARTHUR
	<b>Examiner</b>	<b>Art Unit</b>
	Laura A. Bouchelle	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) 19-24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/29/03</u> .   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Double Patenting***

1. Claims 1-18 of this application conflict with claims 1-20 of Application No. 10/132793. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

2. Claims 1-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6554803. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-11 of the patent teach all the element of the claims in the current application.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 2, 4-7, 9-11, 12-14, 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Satchell (US 3736932). Satchell discloses a syringe apparatus having syringe barrel 80, a piston 83 slidable mounted in the barrel, and a plunger 82 attached thereto, a nozzle tip 90 having a flange with a recess disposed therein, a sleeve frictionally mounted on the front end of the syringe barrel, a neck with a curve portion and a passage therethrough, and a filter 104 mounted n the recess of the sleeve. See Fig. 7. The barrel is formed of smooth transparent glass or plastic (Col. 6, lines 16-17). The filter is mounted such that is does not contact the end of the syringe barrel. See Fig. 7.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Satchell in view of Sutherland et al (US 5061236). Claim 3 differs from Satchell in calling for the mesh size of the filter to be about 105 microns. Sutherland teaches a filter having mesh openings of about 105 microns to filter out air bubbles or other foreign matter (Col. 4, lines 11-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Satchell to have a mesh size of about 105 microns as taught by Sutherland to filter out air bubbles or other foreign matter.

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7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Satchell in view of Seberg (US 4192305) in further view of Hargest (US 3938513). Claim 8 differs from Satchell in calling for the nozzle tip to be made of low density polyethylene. Seberg teaches a catheter comprising biocompatible material such as low density polyethylene (Col. 3, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Satchell to include a nozzle formed of low density polyethylene as taught by Seberg so that the nozzle is biocompatible.

8. Claim 8 further differs from the teachings above in calling for the filter to be made of low density polyethylene. Hargest teaches a filter formed of a rigid material such as polyethylene (Col. 2, lines 32-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the filter of Satchell to be formed of polyethylene as taught by Hargest to provide the advantage of rigidity.

***Allowable Subject Matter***

9. Claims 19-24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The method disclosed in claims 19, 21, 23 cannot be found and is not suggested by the prior art. The steps not found are aspirating bone marrow from the patient and mixing it with bone regeneration material then removing the nozzle tip.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

LAB

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